IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6.11.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.3182 of 1995

Savarimuthu .. Petitioner

vs.

Maricannu .. Respondent

Revision Petition filed under section 115 of CPC against the order dated 24.8.1995, passed in I.A.No.3900/1995 in O.S.No.618/1994, on the file of the II Addl. District Munsif, Pondicherry.

For Petitioner : Mr.V.Lakshminarayanan, for Mr.V.Ragavachari.

For Respondent : No Appearance

ORDER:

This Revision Petition has been filed against the order dated 24.8.1995, passed in I.A.No.3900/1995 in O.S.No.618/1994, on the file of the II Addl. District Munsif, Pondicherry.

2. The plaintiff is the revision petitioner.

3. The plaintiff is aggrieved by the order of the trial court dated 24.8.1995 made in I.A.No.3900/1995 in O.S.No.618/1994. In that I.A., the respondent/defendant prayed to set aside the exparte decree dated 3.11.1994 and the trial court allowed the application for setting aside the exparte decree by imposing a cost of Rs.200/-.

4. Heard the learned counsel for the petitioner. Though notice was sent to the respondent there was no appearance either in person or through counsel on behalf of the respondent.

5. Learned counsel for the revision petitioner submitted that the defendant was set exparte on 21.10.1994 and exparte decree was passed against him on 3.11.94. But I.A.No.3900/1995 was filed only on 11.7.1995 without a petition to condone the delay of nearly 8-1/2 months. Further he submitted that the I.A. itself is not maintainable in view of Sections 4 and 5 of the Pondicherry Limitation (Repeal of Local Laws) Act, 1994 (Act 15 of 1994).

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6. I am unable to accept this contention of the learned counsel for the revision petitioner.

7. Under Sec.5(b) of the Act, 1994, it is stated that nothing in that Act shall affect any suit/appeal or application instituted, preferred or made before and pending at such commencement of the Act.

8. Admittedly, the suit in question was filed in 1994 itself and the Act 15/1994 was published in the gazette on 3.1.1995 only. Therefore the provisions of the Act 15/1994 will not apply to O.S.No.618/1994 filed by the revision petitioner.

9. With regard to the contention that no petition was filed to condone the delay in filing the application under Order 9 Rule 13 of CPC, I am of the view that this cannot be held against the respondent at this juncture as the trial court has exercised its discretion to set aside the exparte decree itself which means the delay aspect has been duly considered by the trial court.

10. The suit itself is for a declaration to declare that the plaintiff is the absolute owner of the suit property and also for recovery of possession. In such circumstances, in the interest of justice, the respondent is to be given a chance to contest the suit on merits, rather than refusing to set aside exparte decree on technicalities. Therefore the trial court has rightly allowed I.A.No.3900/1995.

11. The reason given by the respondent to set aside the exparte decree is that he went to Villupuram for attending a close relative's death ceremony and thereafter he fell ill. His counsel was also not able to appear before the trial court to get an adjournment. In my view, these are normally acceptable reasons for setting aside the exparte decree and I do not want to interfere with the discretion exercised by the trial court to set aside the exparte decree.

12. Hence I find no merits in the Civil Revision Petition and the same is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
The II Addl. District Munsif, Pondicherry.

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